

D/F

DAVID GORDON
ATTORNEY & COUNSELLOR AT LAW
Old Federal Courthouse
300 Rabro Drive – Suite 138
Hauppauge, NY 11788

Tel: (631) 582-4423

Fax: (631) 582-0666

February 23, 2005

FEB 28 2005

Chambers

Honorable Denis R. Hurley
United States District Judge
United States District Court
Eastern District of New York
934 Federal Plaza
Central Islip, NY 11722-4447

Re: Mindlin et al. v. Burger King Corporation et al.
Civil Action No. 03-CV-6003

Dear Judge Hurley:

I am one of the attorneys for the Plaintiffs in the above entitled action. I am writing on behalf of Plaintiff Don Johnson and requesting that Your Honor review your Order of February 7, 2005, based on Magistrate Judge Orenstein's Report and Recommendation dated January 10, 2005. We make this request in the interest of justice.

Magistrate Orenstein's recommendation is grounded on the fact that we could not contact Mr. Johnson for a lengthy period of time. But on January 31, 2005, I received a telephone call from Mr. Johnson. His personal situation is as follows:

Our last contact with Mr. Johnson occurred in early September 2004, when he came to our offices to review and sign certain discovery documents. At that time, he was living with his uncle in Medford. Mr. Johnson had then moved from that address, and his uncle suffered a stroke. We could not contact Mr. Johnson's uncle due to his medical problems, and we had no knowledge of Mr. Johnson's move at that time. Further, we had absolutely no way available to us to contact Mr. Johnson.

Mr. Johnson began working with an interstate moving company as part of a trucking crew in September 2004. He is not in New York the majority of the time, since his employment usually takes him to the southeastern United States.

At this time, I can report that we have completely updated contact information from Mr. Johnson, and we do not anticipate any further problems in reaching him.

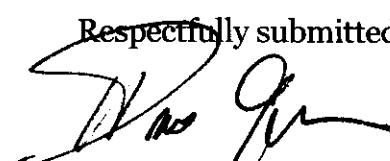
Page Two
Hon. Denis R. Hurley
2-23-05

DAVID GORDON, ESQ.

Based on the timeline of events surrounding Mr. Johnson's recent contact with our offices, we were certainly not in any position to object to Magistrate Orenstein's recommendations dated January 10, 2005. Our contact with Mr. Johnson did not happen until eleven days after January 20, 2005, and by then the ten-day period for objections had expired under Fed. R. Civ. P. 72.

Accordingly, based upon this new information, and in the interest of justice, we respectfully request that Your Honor consider the reinstatement of the claims of Plaintiff Don Johnson in this action.

Respectfully submitted,



DAVID GORDON, ESQ.

DG/jm

cc: Roger Briton, Esq. [via e-mail: britonr@jacksonlewis.com]
Kristin Roy, Esq. [via e-mail: hwolfson@mcsw.com]
Mark Murray, Esq. [via e-mail: mark@murrayandhopkins.com]